

## **REMARKS**

Claims 1, 3-9, 11-17 and 19-24 are pending in the application. Claims 1, 3-9, 11-17 and 19-24 have been rejected.

Claims 9 and 11 – 17 and 19 – 24 stand rejected under 35 U.S.C. § 101. Claims 9 and 17 have been amended to address this rejection.

Claims 1, 3-9, 11-17 and 19-24 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1, 9 and 17 have been amended to address this rejection. More specifically, these claims have been amended to clarify that the same virtual machine cluster is referred to throughout the claims. Additionally, the sharing element has been amended to further define what is meant by sharing.

Claims 1, 3, 9, 11, 17 and 19 stand rejected under 35 U.S.C. § 102(e) over Van Rietschote et al., U.S. Patent No. 7,203,944 (Rietschote). Claims 4 – 8, 12 – 16 and 20 – 24 stand rejected over Rietschote in view of Zhu et al., Jessica2: A Distributed Java Virtual Machine with Transparent Thread Migration Support (2002) (Zhu).

Rietschote generally disclose a cluster of computer systems where the computer systems may include virtual machines. (See e.g., Rietschote, Col. 2, lines 46 – 65.). Rietschote discloses that the virtual machine resource may be failed over in response to detection of a failure. However, there is no disclosure in Rietschote of sharing information about a plurality of virtual machines within the virtual machine cluster such that a virtual machine may be added to the virtual machine cluster or such that a virtual machine may be removed from the virtual machine cluster as the plurality of virtual machines continues to run or of determining that a CPU load utilization on a first virtual machine exceeds a threshold value and moving a thread from the first virtual machine to a second virtual machine during a load-balancing operation in response to the first virtual machine exceeding the threshold value. This deficiency of Rietschote is not cured by Zhu.

Zhu discloses a distributed Java Virtual Machine which includes a thread migration mechanism to enable dynamic load balancing by migrating Java threads between cluster nodes at

runtime without programmers' involvement. There is no disclosure in Zhu of determining that a CPU load utilization on a first virtual machine exceeds a threshold value and moving a thread from the first virtual machine to a second virtual machine during a load-balancing operation in response to the first virtual machine exceeding the threshold value

Accordingly, Rietschote or Zhu, taken alone or in combination, do not disclose or suggest determining that a CPU load utilization on a first virtual machine exceeds a threshold value and moving a thread from the first virtual machine to a second virtual machine during a load-balancing operation in response to the first virtual machine exceeding the threshold value, all as required by claim 1 and as substantially required by claims 9 and 17. Accordingly, claims 1, 9 and 17 are allowable over Rietschote and Zhu. Claims 5 – 8 depend from claim 1 and are allowable for at least this reason. Claims 13 – 16 depend from claim 9 and are allowable for at least this reason. Claims 21 – 24 depend from claim 17 and are allowable for at least this reason.

### CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned at 512-338-9100.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically submitted to the COMMISSION FOR PATENTS via EFS on October 29, 2008

*/Stephen A. Terrile/*

Respectfully submitted,

*/Stephen A. Terrile/*

Stephen A. Terrile  
Attorney for Applicant(s)  
Reg. No. 32,946